

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1708V

(not to be published)

CLIFFORD GRAY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 18, 2023

Special Processing Unit (SPU);
Attorney's Fees and Costs

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Alexis B. Babcock, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On November 30, 2020, Clifford Gray filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleged the Table claim that he suffered a shoulder injury related to vaccine administration after receiving the influenza vaccine on November 12, 2019. Petition, ECF No. 1. On September 12, 2022, I issued a decision awarding compensation to Petitioner, following briefing by the parties. ECF No. 34.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$20,245.10 (representing \$19,575.50 for fees and \$669.60 for costs). Petitioner's Application for Attorneys' Fees ("Motion") filed February 3, 2023, ECF No. 39. In

¹ In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred no out-of-pocket expenses. *Id.* at 2.

Respondent reacted to the motion on February 3, 2023, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, 3 n.2, ECF No. 40. Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's requests and find a reduction in the amount of fees to be awarded appropriate, for the reason listed below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. See *Savin v. Sec'y of Health & Hum. Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Hum. Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. See *Sabella v. Sec'y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Hum. Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

Petitioner requests compensation for his attorney Amy A. Senerth at the following rates: \$275 per hour for time billed in 2020; \$300 per hour for time billed in 2021; and \$350 per hour for time billed in 2022. Petitioner also requests compensation for attorney Maximillian Muller at the rates of \$325 per hour for time billed in 2019; and \$350 per hour for time billed in 2020. Motion at 1.

The hourly rates requested for Mr. Muller and Ms. Senerth for work performed through the end of 2021 are reasonable and consistent with our prior determinations and will therefore be adopted. Ms. Senerth, however, was previously awarded the rate of \$325 per hour for her time billed in 2022, less than what is being requested herein. See *Babyak v. Sec'y of Health & Hum. Servs.*, No. 20-0495V, 2022 WL 2288692 (Fed. Cl. Spec. Mstr. May 19, 2022); *Neiman v. Sec'y of Health & Hum. Servs.*, No. 20-445V, 2022 WL 2282444 (Fed. Cl. Spec. Mstr. May 12, 2022); *Johnston v. Sec'y of Health & Hum. Servs.*, No. 19-0822V, 2022 WL 2387528 (Fed. Cl. Spec. Mstr. May 27, 2022). I find no reason to deviate from the previously awarded rate. Accordingly, I reduce Ms. Senerth's rate to \$325 per hour for her time billed in 2022, to be consistent with her previously awarded rate. This results in a reduction of attorney's fees to be awarded of **\$695.00**.³

Furthermore, Petitioner requests \$669.60 in overall costs, (Motion at 15), and has provided supporting documentation for all claimed costs. Motion at 16-21. Respondent offered no specific objection to the rates or amounts sought. I have reviewed the requested costs and find them to be reasonable.

Finally, I note this case required additional briefing regarding the issue of damages. See Status Report, filed May 2, 2022, ECF No. 26 (reporting an impasse in settlement discussions); Petitioner's Brief in Support of a Damages Decision, filed Aug. 12, 2022, ECF No. 33. Petitioner's counsel expended approximately 5.00 hours drafting her brief in support of a damages decision. Motion at 11-12. I find this amount of time to be reasonable.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). I award a total of **\$19,550.10** (representing

³ This amount consists of $(\$350 - \$325) \times 27.80 \text{ hrs} = \695.00

\$18,880.50 in fees and \$669.60 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, Amy A. Senerth.

In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran

Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.